

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

VOL. 35

MAY 23, 2001

NO. 21

This issue contains:

U.S. Customs Service

General Notices

U.S. Court of International Trade

Slip Op. 01-55

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 4-2001)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of March 2001. The last notice was published in the CUSTOMS BULLETIN on April 18, 2001.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: May 4, 2001.

JOANNE ROMAN STUMP,
Chief,
Intellectual Property Rights Branch.

The lists of recordations follow:

04/10/01
07:35:20

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN MARCH 2001

04/10/01
17:35:20

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN MARCH 2001

REC. NUMBER	EFF. DT.	EXP. DT.	NAME OF COP.	THK.	TNN	OR	MSK	OWNER NAME	RES.
COP0100018	20010312	20210327	ABSIDE LABEL/PACKAGING					SYLMARK, INC.	N
COP0100019	20010312	20210327	SQUEEZE BREEZE WATER MISTING FAN PACKAGING CARDS					INNOVATIVE DESIGN ENTERPRISES, I	N
COP0100020	20010327	20210327	POKEHORN GOLD					NINTENDO OF AMERICA INC.	N
COP0100021	20010327	20210327	TAE BO LIVE-ADVANCED VOLUME 11					NCP MARKETING GROUP INC.	N
COP0100022	20010327	20210327	TAO BO LIVE-ADVANCED VOLUME 12					NCP MARKETING GROUP INC.	N
COP0100023	20010327	20210327	CARDASS MASTERS GUNDAM CHRONICLE 3					SOTSU AGENCY CO., LTD.	N
COP0100024	20010327	20210327	JUST DUCKY					ROCKETMEAR	N
COP0100025	20010327	20210327	6.5" FOO BEARS" WITH CHINESE SYMBOLS					FIESTA CONCESSION CORP.	N
COP0100026	20010327	20210327	SALLY AND HER BICYCLE #99101					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100027	20010327	20210327	DALLY AND HER SKATEBOARD #25468					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100028	20010327	20210327	SALLY AND HER SKATEBOARD #25468					BLIZZARD ENTERTAINMENT	N
COP0100029	20010327	20210327	HOT ROD RUMBLE CORVETTE ITEM NO. 6697					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100030	20010327	20210327	HOT ROD RUMBLE BEL AIR ITEM NO. 6697					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100031	20010327	20210327	HOT ROD RUMBLE MUSTANG ITEM NO. 6699					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100032	20010327	20210327	EMERGENCY TOM TRUCK ITEM NO. 84806					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100033	20010327	20210327	POWER TRANSPORTER ITEM NO. 84806					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100034	20010327	20210327	POWER TRANSPORTER ITEM NO. 84806					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100035	20010327	20210327	POWER TRANSPORTER ITEM NO. 84806					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100036	20010327	20210327	TINY TRANSPORTER JET ITEM NO. 99188					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100037	20010327	20210327	TIME TIME FRIENDS, ITEM NO. 98800					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100038	20010327	20210327	COOK N' BAKE FUN, ITEM NO. 98801					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100039	20010327	20210327	COOK N' BAKE FUN, ITEM NO. 98801					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100040	20010327	20210327	TIME PLAWGRINDING ITEM NO. 18609					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100041	20010327	20210327	THE MUSCLE SHOP ITEM NO. 20400					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100042	20010327	20210327	POWER TRANSPORTER ITEM NO. 17448					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100043	20010327	20210327	TINY FERRIS WHEEL ITEM NO. 99200					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100044	20010327	20210327	TINY TRANSPORTER ITEM NO. 99188					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100045	20010327	20210327	POWER TRANSPORTER ITEM NO. 88803					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100046	20010327	20210327	POWER TRANSPORTER ITEM NO. 88803					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100047	20010327	20210327	GIANT FIRE ENGINE ITEM NO. 85964					TACK CHEUNG PLASTIC MFG., LTD.	N
COP0100048	20010330	20210330	B/O FISHING GAME #2312					TOMSTOYS, INC.	N
COP0100049	20010330	20210330	NOVA					SANGLUCK CORPORATION, INC.	N
SUBTOTAL RECORDED TYPE			32						
TKM0100061	20010312	20100919	ARMITRON ZONE AND DESIGN					E. GLUCK CORPORATION	N
TKM0100062	20010312	20100704	TC WORKS					T.C. WORKS	N
TKM0100063	20010312	20100411	DIVELLA & DESIGN					F. DIVELLA S.P.A.	N
TKM0100064	20010312	20090808	AT&T WITH DESIGN					AT&T CORPORATION	N
TKM0100065	20010312	20100719	SAYZAS & DESIGN					SAZAS & DESIGN	N
TKM0100066	20010312	20100719	TETRIS					ELORG LLC	N
TKM0100067	20010312	20100627	TETRIS					ELORG LLC	N
TKM0100068	20010312	20090802	IRON GRIP					IRON GRIP BARBELL COMPANY	N
TKM0100069	20010312	20090706	IRON GRIP					IRON GRIP BARBELL COMPANY	N
TKM0100070	20010312	20061029	TIMOTHY HITSMAN & DESIGN					IRON GRIP BARBELL COMPANY	N
TKM0100071	20010312	20100909	WILLET DRIVER DESIGN					T. HITSMAN & ASSOCIATES, LTD.	N
TKM0100072	20010312	20100909	WILLET DRIVER DESIGN					T. HITSMAN & ASSOCIATES, LTD.	N
TKM0100073	20010312	20100918	BEPSA (PLAIN BLOCK LETTERS)					HUBLEY INTERNATIONAL LLC	N
TKM0100074	20010312	20100921	BEPSA					HUBLEY INTERNATIONAL LLC	N
TKM0100075	20010312	20100321	BELGUARDIO					EL GUARDIO S.R.L.	N

PAGE 1
DETAIL

34/10/01
37.35.20

U. S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN MARCH 2001

PAGE 2
DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
TMK010072	20010313	20010027	CHESTER MAP DESIGN	IMPACT PRODUCTS, INC.	N
TMK010073	20010319	20010027	SKETCHERS IT'S THE S' FOOTWEAR DESIGN	SKETCHERS U.S.A., INC.	N
TMK010077	20010319	20071014	SKETCHERS USA	SKETCHERS U.S.A., INC.	N
TMK010078	20010319	20080317	SKETCHERS	SKETCHERS U.S.A., INC.	N
TMK010080	20010319	20071125	WORLD MAP GLOBE DESIGN WITH THE LETTER S	SKETCHERS U.S.A., INC.	N
TMK010081	20010319	20060102	SKETCHERS FOOTWEAR DESIGN	SKETCHERS U.S.A., INC.	N
TMK010082	20010319	20091102	SPORT-UTILITY SKETCHERS USA CLOTHING DESIGN & LETTER S	SKETCHERS U.S.A., INC.	N
TMK010083	20010319	20040906	S DESIGN	SKETCHERS U.S.A., INC.	N
TMK010084	20010319	20040830	SKETCHERS	SKETCHERS U.S.A., INC.	N
TMK010085	20010319	20081124	S DESIGN (STYLIZED)	SKETCHERS U.S.A., INC.	N
TMK010086	20010319	20100215	GEN S	SKETCHERS U.S.A., INC.	N
TMK010087	20010319	20100516	S DESIGN (STYLIZED)	SKETCHERS U.S.A., INC.	N
TMK010088	20010319	20091112	SKETCHERS IT'S THE S DESIGN	SKETCHERS U.S.A., INC.	N
TMK010089	20010319	20091116	S LIGHTS	SKETCHERS U.S.A., INC.	N
TMK010090	20010319	20070715	STREET CLEAT	SKETCHERS U.S.A., INC.	N
TMK010091	20010319	20080721	SPORT-UTILITY SOCKWEAR AND DESIGN	SKETCHERS U.S.A., INC.	N
TMK010092	20010319	20091012	GENERATION S	SKETCHERS U.S.A., INC.	N
TMK010093	20010319	20070805	SPORT-UTILITY FOOTWEAR AND DESIGN	SKETCHERS U.S.A., INC.	N
TMK010095	20010327	20070805	DBC	SKETCHERS U.S.A., INC.	N
TMK010096	20010327	20100825	CHATEAU	SKETCHERS U.S.A., INC.	N
TMK010097	20010327	20020604	CHAP STICK	SKETCHERS U.S.A., INC.	N
TMK010098	20010327	20100306	JIGCENTER-7	SKETCHERS U.S.A., INC.	N
TMK010099	20010327	20100919	NY JEANS NEW YORK & COMPANY	SKETCHERS U.S.A., INC.	N
TMK010100	20010327	20090627	MISCELLANEOUS DESIGN	SKETCHERS U.S.A., INC.	N

SUBTOTAL RECORDATION TYPE 40

TOTAL RECORDATIONS ADDED THIS MONTH 72

U.S. CUSTOMS SERVICE

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 9, 2001.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO THE CLASSIFICATION OF
TEXTILE STORAGE/PROTECTOR POUCHES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the classification of textile storage/protector pouches.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification of textile storage/protector pouches under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before June 22, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, (202) 927-2380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L.

103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of textile storage/protector pouches. Although in this notice, Customs is specifically referring to one ruling, NY F88775, dated July 13, 2000, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final notice.

In New York Ruling Letter (NY) F88775, dated July 13, 2000, Customs ruled that the subject item was properly classified in subheading

4202.92.3031, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for travel, sports and similar bags, with outer surface of textile materials, other, of man-made-fibers, other. The corresponding textile quota category is 670. This ruling letter is set forth as "Attachment A" to this document.

Since the issuance of NY F88775, Customs has reviewed the classification of these items and has determined that the cited ruling is in error. We have determined that this item is similar to the *eo nomine* goods, "camera cases and "binocular cases" of heading 4202, HTSUS. Accordingly, the subject merchandise is properly classified as an "other" bag in subheading 4202.92.9026, HTSUSA, which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other, With outer surface of textile materials: Other: Of man-made fibers." The general column one rate of duty is 18.6 percent *ad valorem*. The quota category is 670.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY F88775, dated July 13, 2000, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter HQ 964393 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action consideration will be given to any written comments timely received.

Dated: May 4, 2001.

GAIL A. HAMILL,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

New York, NY, July 13, 2000.

CLA-2-42:RR:NC:TA:341 F88775

Category: Classification

Tariff No. 4202.92.3031

MR. ELI J. MAMIYE, VP
INNOVATIVE PRODUCTS INT'L, INC.
Plaza 34, Suite U
1070 State Route 34
Matawan, NJ 07747

Re: The tariff classification of travel pouches from China.

DEAR MR. MAMIYE:

In your letter dated June 22, 2000, you requested a classification ruling for travel pouches.

The samples submitted are identified as "Intercept Protectors". The items are generic pouches designed to provide storage, protection, organization and portability for personal effects and property. The pouches are manufactured with an exterior surface of textile man-made material. You have indicated in your letter that the pouches will be imported in various sizes. Their size ranging from approximately 5" x 3" to 14" x 14½". They are secured by means of a flap with a hook and loop fastener.

The applicable subheading for the pouches will be 4202.92.3031, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports and similar bags, with outer surface of textile materials, other, of man-made fibers, other. The duty rate will be 18.6 percent ad valorem.

HTS 4202.92.3031 falls within textile category designation 670. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 212-637-7091.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 964393 ASM
Category: Classification
Tariff No. 4202.92.9026

ELI J MAMIYE, VP
INNOVATIVE PRODUCTS INT'L, INC.
Plaza 34, Suite U
1070 State Route 34
Matawan, NJ 07747

Re: Request for reconsideration and Revocation of NY F88775: Classification of Textile Storage/Protector Pouches.

DEAR MR. MAMIYE:

This is in response to your letter, dated July 17, 2000, requesting reconsideration of Customs New York Ruling (NY) F88775, dated July 13, 2000, regarding the classification of a textile storage/protector pouch under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY F88775 by providing the correct classification for the subject merchandise. A sample was submitted to this office for examination.

Facts:

The subject merchandise is identified as the "Intercept Protector" pouch and is manufactured with an exterior surface of textile man-made material. It is our understanding that the pouches will be imported in various sizes ranging from approximately 3 inches x 5 inches to 14 inches x 14.5 inches. The opening of the pouch has extra length, which folds over one time and is secured by a hook and loop fastener. The interior contains a copper color lining of plastic sheeting with a black mesh overlay. The packaging states that the pouch is a protector for: cameras, binoculars, electronic flashes, computers, digital and electronic equipment, audio/video products, radio, "Walkman", disc-man, mini-disc, photos, palm held devices, photos, film material, and any other product subject to corrosion. According to the packaging, the "Intercept Protector" has been designed to react with and neutralize corrosive atmospheric gases thereby ensuring a longer life for the protected product.

In New York Ruling Letter (NY) F88775, dated July 13, 2000, the subject item was classified in subheading 4202.92.3031, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for travel, sports and similar bags, with outer surface of textile materials, other, of man-made-fibers, other. The corresponding textile quota category is 670. You disagree with this classification and claim that the "Intercept Protector" storage pouch has been designed exclusively for long term storage. You further note that the product is "specifically suited to store and protect the contents from long term corrosion." Finally, you note that the lack of a handle precludes ease of transport, portability, and organization of contents.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Heading 4202, HTSUSA, specifically covers various cases and containers, and provides as follows:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.

The EN to heading 4202 indicates that the heading covers only the articles specifically named and similar containers. While this type of protector pouch is not specifically named in heading 4202, HTSUSA, the subject pouch is similar to the "binocular cases" and "camera cases" specified in heading 4202, in that it is designed to contain and protect binoculars and cameras and various electronic equipment. According to the EN, the expression "similar containers" in the first part (prior to the semi-colon) includes camera accessory cases that may be of a rigid or soft foundation. The subject "Intercept Protector" pouch is a soft foundation container, which is designed to contain cameras, electronic flashes, film cartridges and various other electronic equipment. However, in order to classify the subject goods as "similar" under heading 4202, HTSUSA, we must look to additional factors, which would identify the merchandise as being *ejusdem generis* (of a similar kind) to those specified in the provision.

In the case of *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867 (1994), *aff'd*, 69 F. 3d 495 (1992), the Court of Appeals stated as follows:

As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.

In classifying goods under the residual provision of "similar containers" of heading 4202, HTSUSA, the Court of Appeals affirmed the trial court's decision and found that the rule of *ejusdem generis* requires only that the imported merchandise share the essential character or purpose running through all the containers listed *eo nomine* in heading 4202, HTSUSA, i.e., " * * * to organize, store, protect and carry various items."

Clearly, the "Intercept Protector" pouch has been designed to store and protect various electronic items. The packaging provides two pictures which detail the results of a 10 year test where a camera was placed in the "Intercept Protector" pouch (no visible corrosion) as compared to one that was not in an "Intercept Protector" pouch (visible corrosion). Pursuant to the *Totes* case (*supra*) the subject pouches are classifiable under heading 4202, HTSUSA, because they share with the containers listed *eo nomine*, the essential characteristics of organizing, storing, and protecting their contents. Although you have asserted that the pouches are precluded from classification under heading 4202, HTSUSA, because they are designed for protective long term storage, it is our opinion that this fact provides additional evidence that the pouches share the characteristics enumerated in *Totes*. The "Intercept Protector" pouches provide a means of *organizing* and *storing* various electronic equipment and *protecting* the items from corrosion for an extended period of time. Furthermore, the pouches come in various sizes thus facilitating their usefulness in the long term storage and organization of electronic equipment including a camera and such accessories as a flash component, film cartridges, batteries, fuses, etc.

Recently, in the case of *Jewelpak Corp. v. United States*, 97 F. Supp. 2d 1192, 2000 Ct. Intl. Trade LEXIS 40; Slip Op. 2000-39 (April 13, 2000), in a footnote to the decision, the Court determined that the aforementioned *Totes* (*supra*) criteria, " * * * to organize, store, protect and carry various items", may be applied in the alternative. The court stated that an article need not have all four of the listed characteristics in order to be classifiable as a "similar container" of heading 4202, HTSUSA; it is enough that it fulfill one of the enumerated criteria. Thus, your assertion that the pouch lacks handles is irrelevant because the pouch is, without question, designed to protect a variety of items against corrosion while providing an organized storage container for the item.

Headquarters Ruling (HQ) 954438, dated November 5, 1993, involved a container made of plastic sheeting material designed to provide a protective cover for a wood moisture meter when not in use. In this ruling, it was determined that the item was a "similar container" to certain cases listed *eo nomine* under heading 4202, HTSUSA, and was classifiable under the provision because it was specially shaped or fitted to hold a particular article and

provided protective storage for the article contained therein. Thus, HQ 954438 provides additional support for classification of the subject merchandise as a "similar container" under heading 4202, HTSUSA, because the "Intercept Protector" is also a soft foundation container which has been designed to provide protective storage. Although containers that are "specially shaped or fitted" are usually intended to organize, store, protect, or carry their contents, this is not one of the enumerated criteria of *Totes (supra)*. Thus, the fact that the "Intercept Protector" is not "specially shaped or fitted" doesn't exclude the article from classification under heading 4202, HTSUSA, as a "similar container." The cases of *Totes (supra)* and *Jewelpak Corp. (supra)* have broadened the scope of "similar containers" classifiable under heading 4202, HTSUSA, in that classification under the provision only requires that the article share one or more of the characteristics of the containers listed *eo nomine*, i.e., organizing, storing, protecting or carrying various items.

In view of the foregoing, we have determined that the "Intercept Protector" pouch is not necessarily a generic "traveling bag" and that NY F88775, dated July 13, 2000, should not have classified the merchandise under subheading 4202.92.3031, HTSUSA, which provides for: travel, sports and similar bags, with outer surface of textile materials, other, of man-made-fibers, other. Rather, it is similar to the *eo nomine* goods, "camera cases" and "binocular cases" and is properly classified as an "other" bag in subheading 4202.92.90, HTSUSA.

Holding:

NY F88775, dated July 13, 2000, is hereby revoked.

The subject merchandise is correctly classified in subheading 4202.92.9026, HTSUSA, which provides for, "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other, With outer surface of textile materials: Other: Of man-made fibers." The general column one rate of duty is 18.6 percent *ad valorem*. The quota category is 670.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office. Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

GAIL A. HAMILL,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF AN
UNTHREADED HEX HEAD STEEL CAPSCREW BLANK

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of an unthreaded hex head steel capscREW blank.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of an unthreaded hex head steel capscREW blank under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on March 21, 2001, in Vol. 35, No. 12 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich,
General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke Port Decision DD880973 was published on March 21, 2001, in Vol. 35, No. 12 of the CUSTOMS BULLETIN. No comments were received in response to this notice. As stated in the proposed notice, this revocation action will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking Port Decision DD880973, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 963296 (*see* the Attachment to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: May 4, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, May 4, 2001.

CLA-2 RR:CR:GC 963296 AML

Category: Classification

Tariff Nos. 7318.15.8065

RAYMOND HUECKSTAEDT
BIG BOLT CORPORATION
1270 Ardmore Avenue
Itasca, IL 60106

Re: An unthreaded cap screw with a diameter of 6mm or more.

DEAR MR. HUECKSTAEDT:

This is in reference to Port Decision DD880973, issued to Big Bolt Corporation by Customs, Ogdensburg, NY, on December 11, 1992, which classified steel cap screw blanks under subheading 7318.29.00 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for screws, bolts * * * and similar articles, of iron or steel * * * non-threaded articles: other. We have reconsidered DD880973 and now believe that the classification of the steel cap screw blank is incorrect. This letter sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on March 21, 2001, in Vol. 35, No. 12 of the CUSTOMS BULLETIN, proposing to revoke Port Decision DD880973 and to revoke the treatment pertaining to the unthreaded cap screw with a diameter of 6mm or more. No comments were received in response to this notice.

Facts:

The articles were described in DD880973 as follows:

The item under review is an unthreaded, hex head, steel cap screw blank made in either Canada, Taiwan or Korea. It is intended to be threaded in the United States after importation.

Issue:

Whether the unthreaded, hex head, steel cap screw blanks are classifiable under subheading 7318.29.00, HTSUS, as screws, bolts * * * and similar articles, of iron or steel * * * non-threaded articles: other; or subheading 7318.15.8065, HTSUS, as an other screw, other, having shanks or threads with a diameter of 6 mm or more?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRI). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The HTSUS subheadings under consideration are as follows:

7318	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:
	Threaded articles:
7318.15	Other screws and bolts, whether or not with their nuts or washers:
7318.15.80	Having shanks or threads with a diameter of 6 mm or more:
	Other:
	With hexagonal heads:
7318.15.8065	Other:
	* * * * *
	Non-threaded articles:
7318.29.00	Other:

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 73.18 provides, in pertinent part, as follows:

Bolts and nuts (including bolt ends), screw studs and other screws for metal, whether or not threaded or tapped, screws for wood and coach-screws are threaded (in the finished state) and are used to assemble or fasten goods so that they can readily be disassembled without damage.

Blanks for bolts and untapped nuts are also included in the heading.

"It is well established that an imported article is to be classified according to its condition as imported * * *." *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911).

By application of GRIs 1 and 2(a), the articles are classifiable in heading 7318 as unfinished screws. In order to determine the proper classification at the subheading level, GRI 6 is applied. GRI 6 requires that the GRIs be applied in order to determine classification at the subheading level. At GRI 6, the two 5-digit choices are between threaded and non-threaded articles. Application of GRI 1 at the subheading level allows us to consider GRI 2(a) again.

GRIs 6 and 2(a) provide, in pertinent part, that:

2. (a) Any reference in a subheading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article.

The ENs to GRI 2(a) provide, in pertinent part:

(II) The provisions of this Rule also apply to blanks unless these are specified in a particular (sub)heading. The term "blank" means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part[.]

The unthreaded, hex head, steel capscREW blanks, upon importation, constitute the essence of capscREWS with a diameter of 6 mm or more. Once the articles are threaded following importation, they will be complete and immediately ready for use. The articles are readily recognizable as unthreaded, hex head, steel capscREW blanks, and are sufficiently complete to have the essential character of finished, threaded screws having shanks or threads with a diameter of 6 mm or more. The articles, although "not ready for direct use, [do] hav[e] the approximate shape or outline of the finished article or part, and * * * can only be used, other than in exceptional cases, for completion into the finished article or part." See the EN to GRI 2(a), above. The unfinished capscREWS are provided for in subheading 7318.15.8065, HTSUS.

Holding:

The articles are classified under subheading 7318.15.8065, HTSUS, as capscREWS with a diameter of 6 mm or more.

Effect on Other Rulings:

DD880973 is hereby revoked. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF AN
UNTHREADED HEX HEAD STEEL BOLT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of an unthreaded hex head steel bolt.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of an unthreaded hex head steel bolt under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on March 21, 2001, in Vol. 35, No. 12 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich,
General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke Port Decision DD880191 was published on March 21, 2001, in Vol. 35, No. 12 of the CUSTOMS BULLETIN. No comments were received in response to this notice. As stated in the proposed notice, this revocation action will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking Port Decision DD880191, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 963297 (*see* the Attachment to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: May 4, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, May 4, 2001.

CLA-2 RR:CR:GC 963297 AML

Category: Classification

Tariff Nos. 7318.15.2060

WILLIAM J. MARSTON
DAVIES, TURNER & CO.
755 North Route 83, Unit 221
Bensenville, IL 60106

Re: An unthreaded hex head steel bolt.

DEAR MR. MARSTON:

This is in reference to Port Decision DD880191, issued to you on behalf of Globe Con International, by Customs, Ogdensburg, NY, on November 18, 1992, which classified an unthreaded hex head steel bolt under subheading 7318.29.00 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for screws, bolts * * * and similar articles, of iron or steel * * * non-threaded articles: other. We have reconsidered DD880191 and now believe that the classification of the unthreaded hex head steel bolt set forth is incorrect. This letter sets forth the correct classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on March 21, 2001, in Vol. 35, No. 12 of the CUSTOMS BULLETIN, proposing to revoke Port Decision DD880191 and to revoke the treatment pertaining to the unthreaded hex head steel bolt. No comments were received in response to this notice.

Facts:

The articles were described in DD880191 as follows:

The item under review is an unthreaded hex head steel bolt blank made in Taiwan. It is intended to be threaded in the United States after importation.

Issue:

Whether the unthreaded hex head steel bolts are classifiable under subheading 7318.29.00, HTSUS, as screws, bolts * * * and similar articles, of iron or steel * * * non-threaded articles: other; or subheading 7318.15.20, HTSUS, as a hex head bolt?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The HTSUS subheadings under consideration are as follows:

- | | |
|---------------|--|
| 7318 | Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: |
| | Threaded articles: |
| 7318.15 | Other screws and bolts, whether or not with their nuts or washers: |
| 7318.15.20 | Bolts and bolts and their nuts or washers entered or exported in the same shipment: |
| | Having shanks or threads with a diameter of 6 mm or more: |
| 7318.15.20.60 | With hexagonal heads: |
| * * * | * * * |
| | Non-threaded articles: |
| 7318.29.00 | Other. |

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 73.18 provides, in pertinent part, as follows:

Bolts and nuts (including bolt ends), screw studs and other screws for metal, whether or not threaded or tapped, screws for wood and coach-screws are threaded (in the finished state) and are used to assemble or fasten goods so that they can readily be disassembled without damage.

Blanks for bolts and untapped nuts are also included in the heading.

"It is well established that an imported article is to be classified according to its condition as imported * * *." *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911).

By application of GRIs 1 and 2(a), the articles are classifiable in heading 7318 as unfinished screws. In order to determine the proper classification at the subheading level, GRI 6 is applied. GRI 6 requires that the GRIs be applied in order to determine classification at the subheading level. At GRI 6, the two 5-digit choices are between threaded and non-threaded articles. Application of GRI 1 at the subheading level allows us to consider GRI 2(a) again.

GRIs 6 and 2(a) provide, in pertinent part, that:

2. (a) Any reference in a subheading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article.

The ENs to GRI 2(a) provide, in pertinent part:

(II) The provisions of this Rule also apply to blanks unless these are specified in a particular (sub)heading. The term "blank" means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part[.]

The unthreaded hex head steel bolts, upon importation, constitute the essence of hex head bolts. Once the articles are threaded following importation, they will be complete and immediately ready for use. The articles are readily recognizable as unthreaded hex head steel bolts, and are sufficiently complete, in their most basic form, to have the essential character of finished hex head steel bolts. The articles, although "not ready for direct use, [do] hav[e] the approximate shape or outline of the finished article or part, and * * * can only be used, other than in exceptional cases, for completion into the finished article or part." See the EN to GRI 2(a), above. The unfinished bolts are provided for in subheading 7318.15.2060, HTSUS.

Holding:

The articles are classified under subheading 7318.15.2060, HTSUS, as hex head bolts.

Effect on Other Rulings:

DD880191 is hereby revoked. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF *SNAPEE*™ WRISTBANDS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of a ruling letter and treatment relating to the tariff classification of *Snapée*™ wristbands.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter relating to the tariff classification of *Snapée*™ wristbands under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice. Notice of the proposed action was published in the CUSTOMS BULLETIN of April 4, 2001, Volume 35, Number 14. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Commercial Rulings Division (202) 927-2511.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**". These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice of proposed revocation of New York Ruling Letter (NY) F84529, dated April 6, 2000, was published in the CUSTOMS BULLETIN of April 4, 2001, Volume 35, Number 14. No comments were received in response to this notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs is revoking or modifying a ruling letter relating to the classification of *Snappee*™ wristbands. Although in this notice Customs is specifically referring to New York (NY) F84529, dated April 6, 2000, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during that notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY F84529 dated April 6, 2000, Customs classified *Snappee*™ wristbands within subheading 6217.10.9530, HTSUS, which provides for "other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other: Other, of man-made fibers." Since the issuance of this ruling, Customs has reviewed the classification of these articles and has determined that the cited ruling is in error. Accordingly, we are revoking NY F84529, as we now believe that *Snappee*™ wristbands are classifiable within subheading 7117.19.90, HTSUS, which provides for "imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other".

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY F84529 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964475 (see "Attachment" to this document).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

Dated: May 7, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, May 7, 2001.
CLA-2 RR:CR:GC 964475 TF
Category: Classification
Tariff No. 7117.19.90

MS. BETH MORRIS,
SERRA INTERNATIONAL, INC.
One Exchange Place, Suite 401
Jersey City, NJ 07302

Re: *Snapee*™ wristband bracelet; Reconsideration of NY F84529.

DEAR MS. MORRIS:

This letter is in reference to NY F84529 issued to you on April 6, 2000, by the Director, National Commodity Specialist Division, concerning the classification of the *Snapee*™ wristband, under the Harmonized Tariff Schedule of the United States (HTSUS). In NY F84529, it was determined that the *Snapee*™ wristband was classified in subheading 6217.10.95.30, HTSUS, which provides for "other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other: Other, of man-made fibers."

We have reviewed NY F84529 and determined that the classification provided for this article is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY F84529 was published on April 4, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 14. No comments were received in response to the notice.

Facts:

Made in China, the *Snapee*™ wristband measures approximately 9.5 inches and is composed of 100% light green colored, polyester fabric with an inner core of thin, spring steel plate which allows the item to be worn around an individual's wrist by application of a light tap of the article against the back of the wearer's wrist.

The item is marketed as a "Comforting Aromatherapy Band" along with its literature, both of which are packaged in a clear, plastic-sleeved container.

The wristband is imported non-scented, and essential oil fragrances, which consist of lavender, pine needle and geranium, are applied after importation into the U.S.

The marketing brochure states that by "using a unique microscopic bubble system, this easy to wear *Snapee*™ wristband provides the user with a continuous 'halo effect' of fragrance for days." It adds, "Unused, the band will retain the essential oils indefinitely."

Issue:

Whether the *Snapee*™ wristband is classifiable as imitation jewelry within heading 7117, HTSUS, or as a clothing accessory in heading 6217, HTSUS.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6, HTSUS, may be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) official interpretation of the Harmonized System at the international level. The ENs, although not dispositive, provide a commentary on the scope of each heading of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

6217	Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212
6217.10	Accessories
	Other
6217.10.95	Other
6217.10.95.30	Of man-made fibers
*	*
7117	Imitation jewelry:
	Of base metal, whether or not plated with precious metal:
7117.19	Other
	Other
7117.19.90	Other
*	*

The *Snapee*™ wristband is comprised of polyester material with an inner thin plate of steel material which provides the wristband shape to fit around the wearer's wrist. GRI 1 provides that an article is classified according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to GRIs 2 through 6. The subject article is comprised of a steel band and decorative polyester fabric. Since it is to be worn as a bracelet, it is potentially described by two headings, 6217 and 7117. Therefore, we must consider relevant section and chapter notes and the ENs.

Heading 6217 provides for "other made up clothing accessories; parts of garments or of clothing accessories." EN 62.17 indicates that heading 6217 provides for "made up textile clothing accessories, other than knitted or crocheted, not specified or included in other headings of this Chapter or elsewhere in the Nomenclature." See EN 62.17 at 939. Thus, this heading is a "basket" provision, which is appropriate "only when there is no [other] tariff category which covers the merchandise more specifically." See *Apex Universal, Inc., v. United States*, CIT Slip Op. 98-69 (May 21, 1998). Therefore, we will first address the other competing provision, heading 7117, HTSUS.

Heading 7117 provides for "imitation jewelry." Imitation jewelry is defined in Note 11, Chapter 71 as:

"articles of jewelry within the meaning of paragraph (a) of note 9, not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal."

Articles of jewelry are described in Note 9 to Chapter 71, in pertinent part, as follows:

a) "any small objects of personal adornment (gem-set or not) (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia)"

The subject wristband is jewelry, that is a small article of personal adornment, within the meaning of Note 9 to Chapter 71. It also meets the terms of Note 11 of Chapter 71, as an article of imitation jewelry. Therefore, the wristband is provided *eo nomine* in heading 7117. Further, we refer to See HQ 088126, dated January 10, 1991 and HQ 088222, dated February 15, 1991, which addressed the classification of snap bracelets (which are similar to the instant article). Like the articles in HQ 088126 and HQ 088222, the instant bracelet derives its "form, shape and function * * * from the flexible spring steel strip." *Id.* Therefore, due to its basic metal construction, we do not find it is a textile article. *Id.*

Heading 6217, other made up clothing accessories, is less specific, and is not appropriate where another heading describes the good. See EN 62.17, discussed above. Classification of the wristband in heading 6217 is therefore excluded.

The addition of essential oils after importation is not relevant in this case. See *Sherwin-Williams Co. v. U.S.*, 38 CCPA 13, 18, C.A.D. 432 (1950). It is well settled goods are classified in their condition as imported: Not what the article is made into after importation, except where classification is dependent on use See *Leonard Levin Co. v. U.S.*, 27 CCPA 101, 105, C.A.D. 677 (1958).

Holding:

At GRI 1, *Snapee*™ wristband is classifiable within subheading 7117.19.90, which provides for "imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other".

Effect on Other Rulings:

NY F84529 dated April 6, 2000 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION OF CUSTOMS RULING AND REVOCATION OF TREATMENT RELATING TO COUNTRY OF ORIGIN MARKING OF CANNED MUSHROOMS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letter and revocation of treatment pertaining to the country of origin marking of canned mushrooms.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the country of origin marking of canned mushrooms and revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before June 22, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C., 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Burton L. Schlissel, Special Classification and Marking Branch, (202) 927-1034.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the country of origin marking of canned mushrooms. Although in this notice Customs is specifically referring to NY G86203 dated January 16, 2001, this notice covers any rulings pertaining to this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. Any party who has received an interpretative ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care

on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY G86203, Customs considered the country of origin marking of canned mushrooms which were packed on shrink-wrapped skids. In that case, Customs determined that the ultimate purchaser of the mushrooms was the importer's customer in the U.S. who used the mushrooms to produce soups, gravies and other food products. Consequently, pursuant to section 134.35(a), Customs Regulations (19 CFR 134.35(a)), the imported article was excepted from the marking requirements and only the outermost container was required to be marked. Customs also held that the cans, which reach the ultimate purchaser, were the outermost containers and accordingly they were required to be marked with the country of origin. NY G86203 is set forth as Attachment A to this document.

Upon reconsideration, however, we find that the position taken in G86203, *supra*, regarding what constitutes the outermost container, is erroneous. In HRL 559976 dated June 30, 1997, steel coils were packed onto skids. In that case, Customs held that the skid was the container of the steel coils and that pursuant to the exception provided under section 134.32(d), Customs Regulations (19 CFR 134.32(d)), marking of the skids would satisfy the country of origin marking requirements provided that the coils reached the ultimate purchaser in the U.S. on the skids. See also HRL 561828 dated October 20, 2000 (the outermost container of textile bags excepted from the individual marking requirements is the skid on which the bags are shipped to the ultimate purchaser).

Accordingly, Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify HRL G86203, and any other ruling not specifically identified, to reflect this position, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter 562077, which is set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially similar transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 9, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, January 16, 2001.
MAR-2 RR:NC:2:228 G86203
Category: Marking

MR. KARL F. KRUEGER
DANZAS AEI CUSTOMS BROKERAGE SERVICES
29200 Northwestern Highway
Southfield, MI 48034

Re: Country of Origin Marking of Imported Canned Mushrooms.

DEAR MR. KRUEGER:

This is in response to your letter dated January 3, 2001, on behalf of Kanan Foods, Inc., Oak Brook Terrace, IL, requesting a ruling on whether imported canned mushrooms are required to be marked with the country of origin if they are later to be processed in the U.S. by a U.S. manufacturer. A sample was not submitted with your letter for review.

Kanan Foods, Inc., imports canned mushrooms from India for use by their customer, Lipton Foods, Englewood Cliffs, NJ. The canned mushrooms are imported on skids, shrink wrapped in plastic, unlabeled, and not marked with the country of origin. Lipton will use the canned mushrooms as ingredients in soups, gravies, and similar food products. The manufacturing process utilized by Lipton involves opening the cans by machine and adding the mushrooms to other ingredients. Paper labels on the cans could tear or be dislodged during this procedure, and would be a potential source of product contamination. For this reason, they require the canned mushrooms to be supplied without labels.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Section 134.1(d), defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported. 19 CFR 134.1(d)(1) states that if an imported article will be used in manufacture, the manufacturer may be the ultimate purchaser if he subjects the imported article to a process which results in a substantial transformation of the article. The case of *U.S. v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98) (1940), provides that an article used in manufacture which results in an article having a name, character or use differing from that of the constituent article will be considered substantially transformed and that the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. See, 19 CFR 134.35.

In this case, the imported mushrooms are substantially transformed as a result of the U.S. processing, and the U.S. manufacturer, Lipton, is the ultimate purchaser. Under 19 CFR 134.35 the containers which reach the ultimate purchaser—the cans—are required to be marked with the country of origin, "India."

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR Part 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212-637-7065.

ROBERT B. SWIERUPSKI,

Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

MAR-05: RR-CR:SM 562077 BLS
Category: Marking

MR. KARL F. KRUEGER
DANZAS AEI CUSTOMS BROKERAGE SERVICES
29200 Northwestern Highway
Southfield, MI 48030

Re: Country of origin marking of canned mushrooms; reconsideration and modification of NY G86203; 134.35; outermost container.

DEAR MR. KRUEGER:

This is in response to your letter dated January 29 and fax of March 21, 2001, on behalf of Kanan Foods, Inc. ("Kanan"), requesting reconsideration of NY Ruling Letter G86203 dated January 16, 2001.

Facts:

Kanan imports canned mushrooms from India for use by their customer, Lipton Foods, Englewood Cliffs, New Jersey. The canned mushrooms are imported on skids and are shrink wrapped in plastic. Lipton will use the canned mushrooms as ingredients in soups, gravies, and similar food products. The manufacturing process utilized by Lipton includes opening the cans by machine and adding the mushrooms to other ingredients. In a letter dated December 20, 2000, Lipton advises that during this process, paper can labels could be dislodged, which would present a potential for product contamination. For this reason, Lipton requires that all canned products be provided without such labeling. Lipton also states that it is aware that the mushrooms supplied by Kanan are a product of India.

NY Ruling Letter G86203

In NY G86203, Customs found that the canned mushrooms undergo a substantial transformation as a result of the processing performed by Lipton in the U.S. and therefore the imported article is excepted from country of origin marking requirements. Customs also held that the cans which reach the ultimate purchaser (Lipton) are the outermost containers and thus are required to be marked with the country of origin. See 19 CFR 134.35.

In this request for reconsideration, Kanan contends that the outermost container, which must be marked with the country of origin, is the shrink-wrapped pallet, and that under these circumstances, the mushroom cans are not required to be marked.

Issue:

Whether, for purposes of 19 CFR 134.35, the "outermost container" of the imported good is the shrink-wrapped pallet.

Law and Analysis:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Section 134.1(b), Customs Regulations (19 C.F.R. §134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of the marking laws and regulations. The case of *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267, C.A.D. 98 (1940), provides that an article used in manufacture in the U.S. which results in an article having a name, character or use differing from that of the imported constituent article will be considered substantially transformed. In such circumstances the U.S. manufacturer will be considered the ultimate purchaser. The imported article will be excepted from the marking requirements and only the outermost container is required to be marked. See 19 CFR §134.35(a).

In HRL 559976 dated June 30, 1997, steel coils were packed onto skids. In that case, Customs held that the skid was the container of the steel coils and that pursuant to the exception provided under section 134.32(d), Customs Regulations (19 CFR 134.32(d)), marking of the skids would satisfy the country of origin marking requirements provided that the coils reached the ultimate purchaser in the U.S. on the skids. See also HRL 561828 dated October 20, 2000 (marking the outermost container (skids) satisfies marking requirements where textile bags are excepted from individual marking).

Under the circumstances, it is Customs determination that the shrink-wrapped skid, which reaches the ultimate purchaser (Lipton), unopened is the outermost container.

Holding:

Pursuant to 19 CFR 134.35(a), the outermost container of the imported mushrooms is the shrink-wrapped pallet. Therefore, the marking requirements will be satisfied provided this container is properly marked with India as the country of origin and reaches Lipton in an unopened condition. NY G86203 is modified accordingly.

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach

Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

James L. Watson
Herbert N. Maletz
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon



Decisions of the United States Court of International Trade

(Slip Op. 01-55)

REBAR TRADE ACTION COALITION, PLAINTIFFS v.
UNITED STATES OF AMERICA, DEFENDANT

Court No. 00-10-00501

Plaintiff Rebar Trade Action Coalition (Plaintiff) has contested, under 28 U.S.C. §1581(i), the United States International Trade Commission's (Commission or Defendant) negative material injury determination regarding subject imports from Japan in *Certain Steel Concrete Reinforcing Bars from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela*, 65 Fed. Reg. 51,329 (Aug. 23, 2000) (*Rebar Investigation*). Plaintiff has also moved to dismiss this case without prejudice. Defendant has moved to dismiss Plaintiff's complaint for lack of jurisdiction. Defendant's unopposed motion is granted. Plaintiff's motion to dismiss without prejudice is denied. This case is dismissed for lack of jurisdiction.

(Dated May 4, 2001)

Wiley, Rein & Fielding (Charles Owen Verrill, Jr.), Washington, D.C., for Plaintiff.

Lyn M. Schlitt, General Counsel, Marc A. Bernstein, Acting Assistant General Counsel, Gracemary Rizzo, Office of General Counsel, United States International Trade Commission, for Defendant.

OPINION

CARMAN, *Chief Judge*: Upon Plaintiff's challenge of the Commission's negative material injury determination regarding subject imports from Japan in *Rebar Investigation*, and upon Defendant's unopposed motion to dismiss for lack of jurisdiction, Defendant's motion is granted. Plaintiff's motion to dismiss without prejudice is denied. This case is dismissed for lack of jurisdiction.

PROCEDURAL BACKGROUND

On October 20, 2000, Plaintiff filed a summons and complaint, claiming the Commission wrongfully terminated its investigation and failed to investigate in accordance with law whether the national steel concrete reinforcing bar industry in the United States is materially injured or threatened with material injury, or that the establishment of an in-

dustry in the United States is materially retarded, by reason of subject imports from Japan in *Rebar Investigation*. Plaintiff claimed this Court has jurisdiction over its appeal pursuant to 28 U.S.C. §1581(i) (2000). Plaintiff's complaint alleged three causes of action: (1) the Commission erred as a matter of law by not aggregating subject imports to evaluate import concentration data, causing its import concentration analysis to be arbitrary and contrary to law; (2) the Commission's import concentration analysis was not supported by substantial evidence of record, was not based on all facts of record, or was otherwise arbitrary and contrary to law; and (3) the Commission failed to conduct a material injury or threat of material injury analysis as required by 19 U.S.C. §1673b.

On November 9, 2000, Defendant filed a motion to dismiss the complaint for lack of jurisdiction. Defendant argued Plaintiff could have had an adequate remedy available under 28 U.S.C. §1581(c) with respect to its challenge of the negative preliminary determination if Plaintiff had filed a timely appeal. Title 28 U.S.C. §1581(c) states: "The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930." Defendant stated 28 U.S.C. §1581(i) does not apply because it explicitly excepts from its scope those determinations reviewable under section 516A(a) of the Tariff Act of 1930.¹ The Commission's determination is reviewable under Section 516A, codified at 19 U.S.C. §1516a, because 19 U.S.C. §1516a(a)(1)(C) provides that a party may appeal a negative determination by the Commission in a preliminary antidumping duty investigation "by filing concurrently a summons and complaint * * * contesting any factual findings or legal conclusions upon which the determination is based." Defendant argues Plaintiff's appeal of the Commission's failure to investigate is a question of whether the Commission's conclusions are supported by substantial evidence and that because Plaintiff's entire complaint merely challenges the factual findings and legal conclusions upon which the Commission based its negative determination, it falls squarely within the filing requirements of 19 U.S.C. §1516a(a)(1)(C). Therefore, because Plaintiff failed to file under 28 U.S.C. §1581(c) in a timely manner, it cannot now use 28 U.S.C. §1581(i) to do so. See *Royal Business Machines, Inc. v. United States*, 669 F.2d 692 (CCPA 1982).

On February 16, 2001, Plaintiff filed a motion to dismiss this action without prejudice pursuant to CIT Rule 41(a)(2). Defendant did not respond.

DISCUSSION

In *Rebar Investigation*, the Commission states that it "determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that

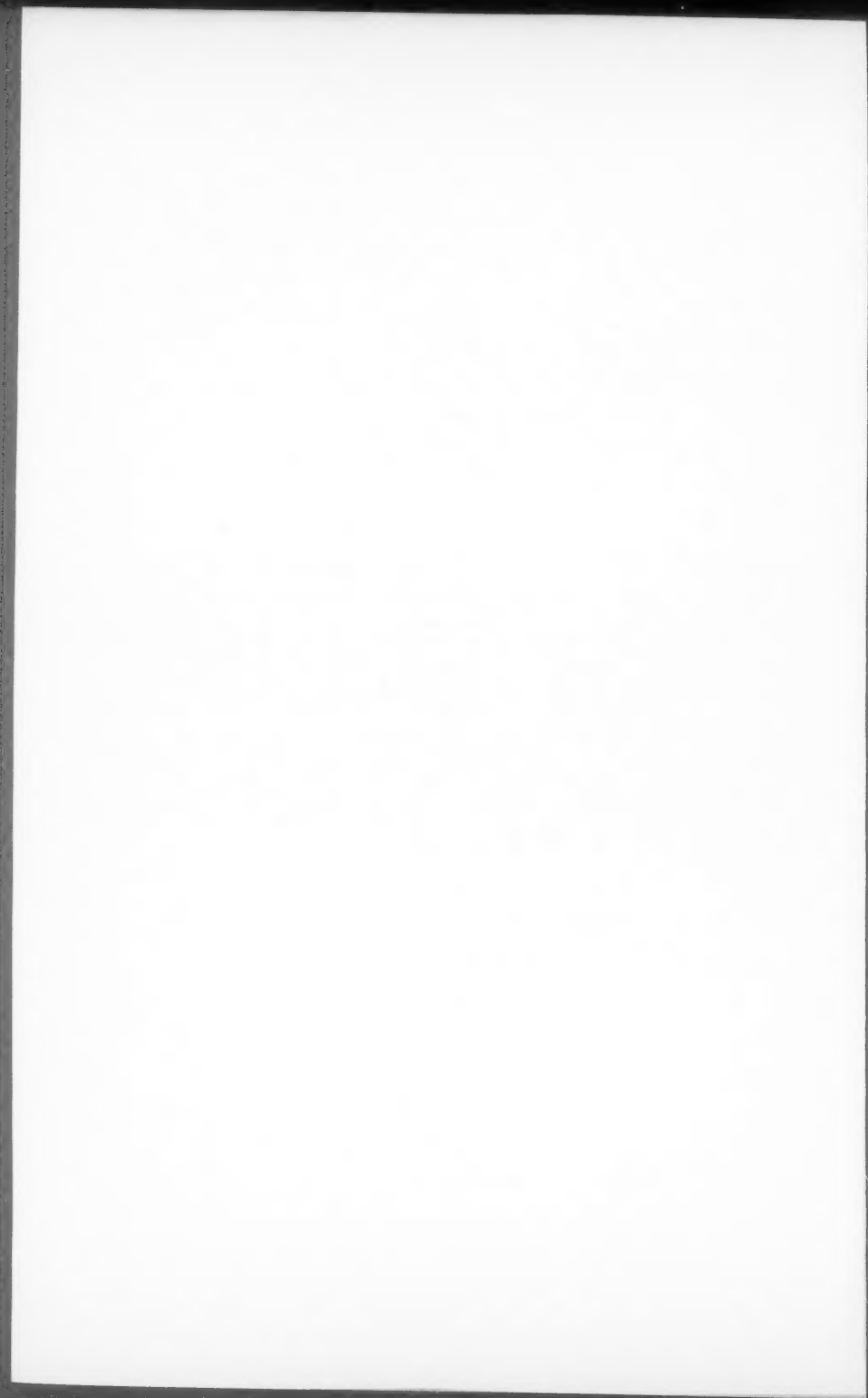
¹ 28 U.S.C. §1581(i) states: "This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable | by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 * * *."

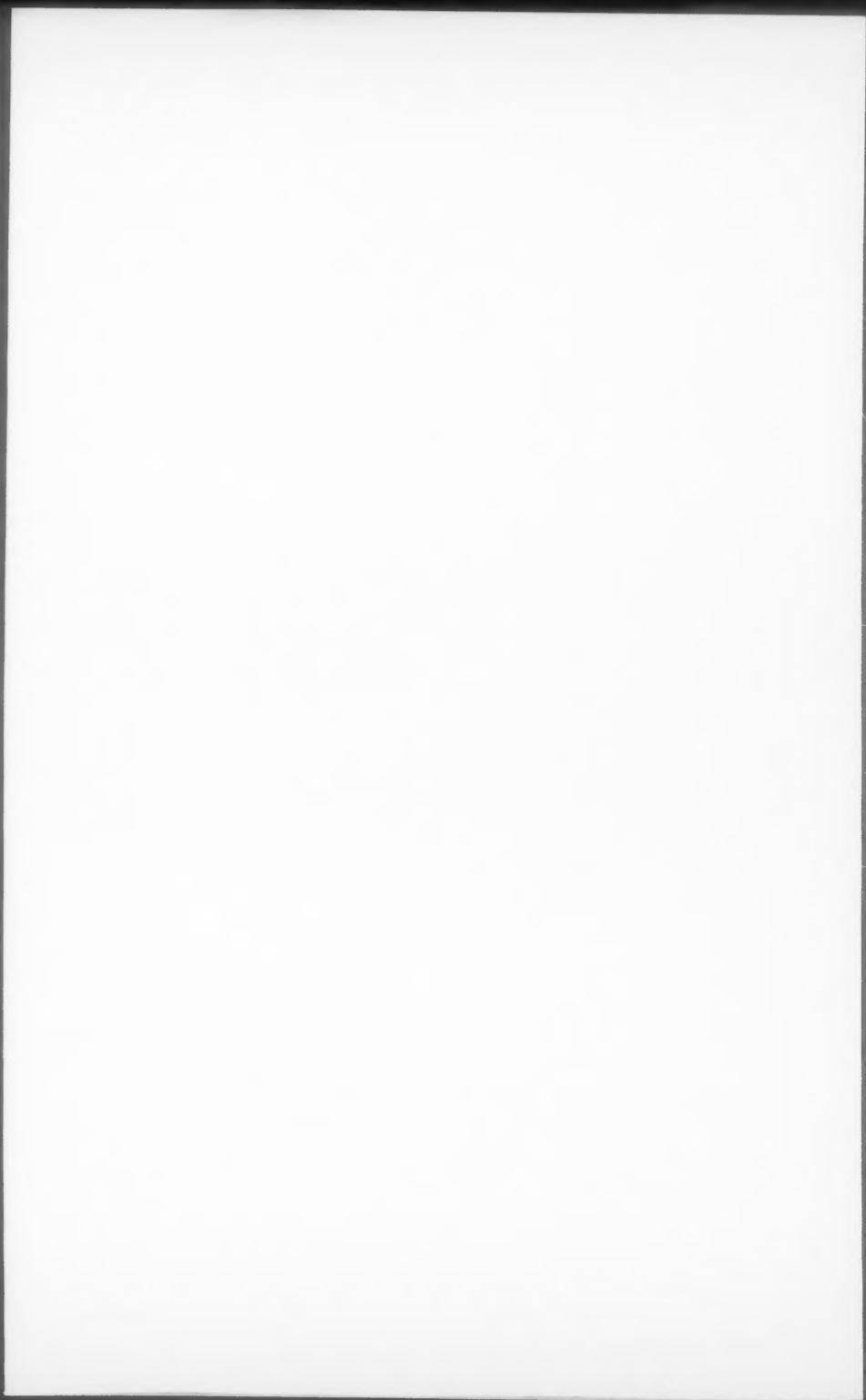
the establishment of an industry in the United States is materially retarded, by reason of such imports from Japan." *Rebar Investigation*, 65 Fed. Reg. at 51,330. Although Plaintiff phrases its appeal as a contest of the Commission's "wrongful and unauthorized termination of an investigation and the failure to conduct an investigation in accordance with the law," Plaintiff's three alleged causes of action actually challenge the factual findings and legal conclusions upon which the determination is based. Plaintiff therefore could have sought relief pursuant to the provisions of 28 U.S.C. §1581(c). "Section 1581(i) jurisdiction may not be invoked when jurisdiction under another subsection of §1581 is or could have been available, unless the remedy provided under that other subsection would be manifestly inadequate." *Miller & Co. v. United States*, 824 F.2d 961, 963 (Fed. Cir. 1987), cert. denied, 484 U.S. 1041 (1988). Plaintiff has not met its burden to show that the remedy provided under §1581(c) would be manifestly inadequate.

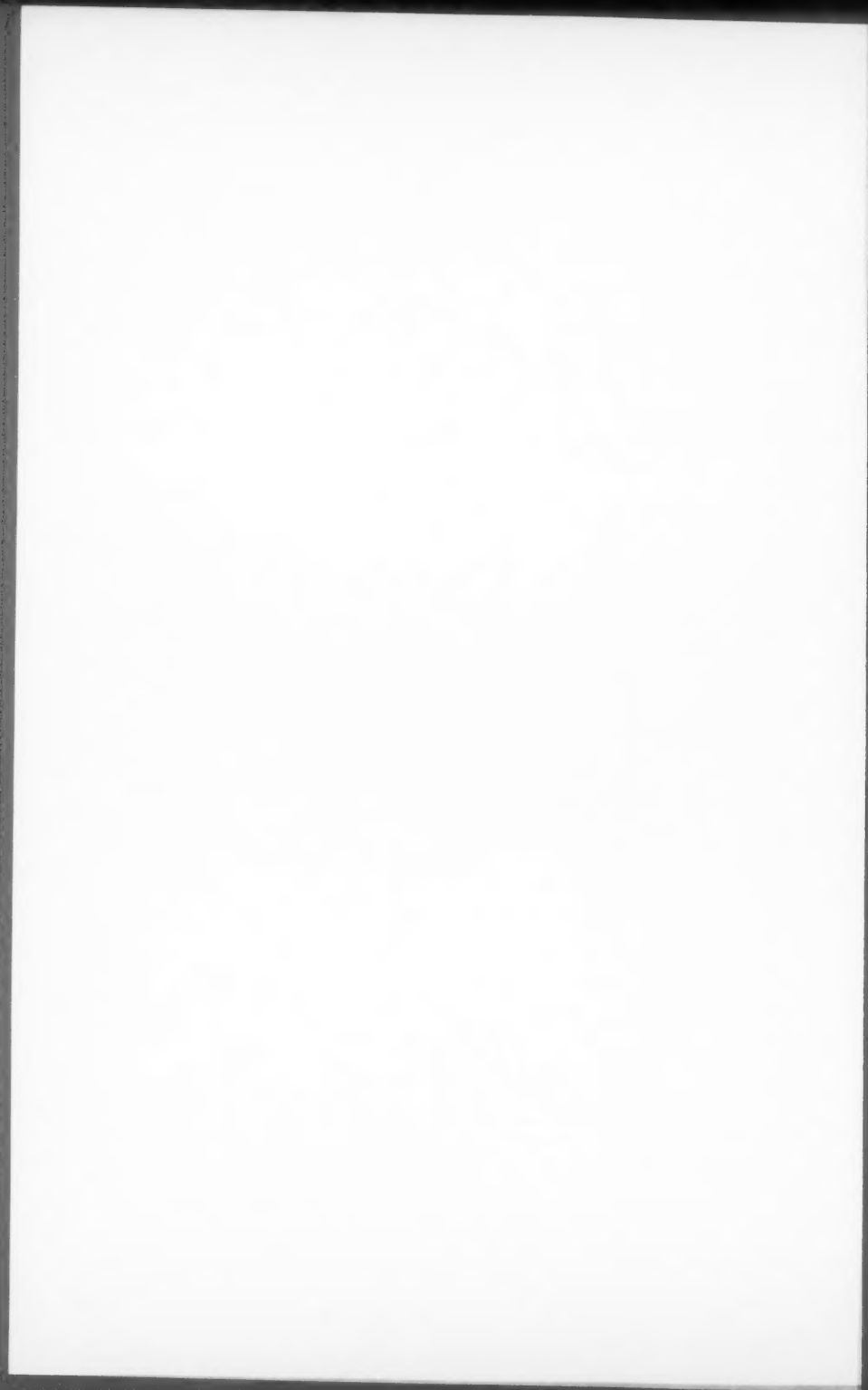
Because this Court grants Defendant's motion to dismiss for lack of jurisdiction, it is unnecessary to address Plaintiff's motion to dismiss without prejudice except to deny it. Under Rule 41(a)(2) of the United States Court of International Trade, a court-ordered voluntary dismissal is without prejudice unless otherwise specified. This court has no jurisdiction over this case and cannot therefore dismiss it with prejudice. See *Textile Productions, Inc. v. Mead Corp.*, 134 F.3d 1481, 1486 (Fed. Cir. 1998) ("[A] lack of subject matter jurisdiction usually justifies only a dismissal, not a dismissal with prejudice.") (citing *Fishburn v. Brown*, 125 F.3d 979, 981 (6th Cir. 1997) and *Crotwell v. Hockman-Lewis Ltd.*, 734 F.2d 767, 769 (11th Cir. 1984)). By granting Defendant's motion to dismiss for lack of jurisdiction, however, this Court makes clear that Plaintiff may not again challenge, under 28 U.S.C. §1581(i), the Commission's negative material injury determination regarding subject imports from Japan in *Rebar Investigation*.

CONCLUSION

Defendant's unopposed motion to dismiss for lack of jurisdiction is granted. Plaintiff's motion to dismiss without prejudice is denied. This case is dismissed for lack of jurisdiction.







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